

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

In re:)	
)	Chapter 11
CIRCUIT CITY STORES, INC., <i>et al.</i> ,)	
)	Case No. 08-35653-KRH
Debtors.)	Jointly Administered
_____)	

**LIMITED OBJECTION OF D.L. PETERSON TRUST AS ASSIGNEE
OF PHH VEHICLE MANAGEMENT SERVICES, LLC TO
DEBTORS' MOTION FOR ORDER PURSUANT TO BANKRUPTCY CODE
SECTIONS 105, 363 AND 364 APPROVING SALE OF DEBTORS' ASSETS
FREE AND CLEAR OF ALL INTERESTS**

D.L. Peterson Trust as assignee of PHH Vehicle Management Services, LLC f/k/a PHH Vehicle Management Services Corporation (“**PHH**”), by its undersigned counsel, hereby submits this limited objection to the *Motion for Order Pursuant to Bankruptcy Code Sections 105, 363 and 364 Approving Sale of Debtors' Assets Free and Clear of All Interests* (the “**Sale Motion**”) [Docket No. 1423] filed by Circuit City Stores, Inc. (“**Circuit City**”) and its related Chapter 11 debtors (collectively, the “**Debtors**”).

1. PHH is the lessor under the following lease agreements with Circuit City (collectively, as amended and supplemented from time to time, the “**Lease Agreements**”):

(a) Motor Vehicle Fleet Open-End Operating Lease Agreement No. 5491 dated January 23, 1998, pursuant to which Circuit City leased the vehicles identified on the schedule attached

Anne Braucher (VSB No. 65294)
DLA PIPER LLP (US)
500 Eighth Street, N.W.
Washington, D.C. 20004
(202) 799-4000
(202) 799-5000
Counsel for D.L. Peterson Trust as Assignee
of PHH Vehicle Management Services, LLC

hereto as Exhibit 1; and (b) Equipment Lease dated April 19, 1999, pursuant to which Circuit City leased the forklifts, trucks and other equipment identified on the schedule attached hereto as Exhibit 2. The property identified on the attached Exhibit 1 and Exhibit 2 is hereafter referred to collectively as the “**Leased Property.**”

2. The Debtors currently enjoy possession, use and benefit of the Leased Property subject to the terms and conditions of the Lease Agreements.

3. By the Sale Motion, the Debtors seek an order approving the sale of substantially all of their assets. The Sale Motion does not indicate, and despite inquiry PHH has been unable to determine, if the Leased Equipment is to be included in the upcoming sale. To the extent the Debtors are seeking to sell any portion of the Leased Property, PHH objects. PHH is the sole owner of the Leased Property, and absent the consent of PHH the Debtors have no right to sell the Leased Property.

4. PHH also has been unable to determine if the Debtors are seeking to assume and assign either or both of the Lease Agreements. To the extent the Debtors are seeking to assume and assign the Lease Agreements, they are required to pay in full the cure amounts under the Lease Agreements and to otherwise comply with all of their obligations under the Lease Agreements through the date of the assumption and assignment. *See* 11 U.S.C. §§ 365(b)(1)(A) and 365(d)(3). PHH reserves the right to insist that the Debtors pay in full the cure amounts and otherwise comply with all of their obligations under the Lease Agreements through the date of assumption and assignment, including, without limitation, payment of any and all post-petition priority claims held by PHH.

5. Furthermore, to the extent the Debtors are seeking to assume and assign the Lease Agreements, the Debtors are required to provide adequate assurance of future performance of

any proposed assignee. *See* 11 U.S.C. §§ 365(b)(1)(C). Because PHH has not received any adequate assurance information, it is not in a position to determine if it is adequately assured of future performance. Accordingly, PHH reserves the right to object to the adequate assurance of future performance of any proposed assignee.

WHEREFORE, PHH requests that the Court:

- (a) Order that the Debtors have no right to sell the Leased Property;
- (b) Order that, to the extent the Debtors are seeking to assume and assign the Lease Agreements, the Debtors must (i) pay in full the cure amounts under the Lease Agreements, (ii) otherwise comply with all of their obligations under the Lease Agreements through the date of the assumption and assignment, and (iii) provide adequate assurance of future performance of any proposed assignee; and
- (c) Grant such other and further relief as is just and appropriate under the circumstances.

Respectfully submitted,

DATE: January 15, 2009

/s/ Anne Braucher
Anne Braucher (VSB No. 65294)
DLA PIPER LLP (US)
500 Eighth Street, N.W.
Washington, D.C. 20004
Tel: (202) 799-4000 / Fax: (202) 799-5000
anne.braucher@dlapiper.com

and

C. Kevin Kobbe
DLA PIPER LLP (US)
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209
Tel: (410) 580-4189 / Fax: (410) 580-3189
kevin.kobbe@dlapiper.com
Counsel for D.L. Peterson Trust as Assignee

of PHH Vehicle Management Services, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 15th day of January, 2009, I served copies of the foregoing *Limited Objection of D.L. Peterson Trust as assignee of PHH Vehicle Management Services, LLC to Debtors' Motion for Order Pursuant to Bankruptcy Code Sections 105, 363 and 364 Approving Sale of Debtors' Assets Free and Clear of All Interests* by electronic means and/or first -class United States mail, postage prepaid, on the following:

Gregg M. Galardi, Esquire (gregg.galardi@skadden.com)
Ian S. Fredericks, Esquire (ian.fredericks@skadden.com)
Skadden, Arps, Slate, Meagher & Flom, LLP
One Rodney Square
Post Office Box 636
Wilmington, Delaware 19899-0636

Dion W. Hayes, Esquire (dhayes@mcguirewoods.com)
Douglas M. Foley, Esquire (dfoley@mcguirewoods.com)
McGuire Woods LLP
One James Center
901 East Carey Street
Richmond, Virginia 23219

Lynn L. Tavenner, Esquire (ltavenner@tb-lawfirm.com)
Paula S. Beran, Esquire (pberan@tb-lawfirm.com)
Tavenner & Beran, PLC
20 North Eighth Street, Second Floor
Richmond, VA 23219

Robert B. Van Arsdale, Esquire (robert.b.van.arsdale@usdoj.gov)
Office of the U.S. Trustee
701 East Broad Street, Suite 4304
Richmond, VA 23219

/s/ Anne Braucher

Anne Braucher